

Add the following claim:

-- 22. A process for preparing a cosmetic product, which comprises

<sup>2</sup> mixing the premix prepared by the process of claim 1, with EDTA or an EDTA salt, and citric acid, and completing the formulation of the cosmetic product which contains at least 3% wt. whey solids basis.--

#### REMARKS

Claims 1-2, 7-10, 17 and 22 are in the application.

Claim 1 was further amended now to make it abundantly clear that the process of the present invention relates to the preparation of a **premix** for a cosmetic product and **not to a cosmetic product** as is the case, for example, with Phillips. The preparation of the premix does not involve the addition and dispersion of any oils, or alcohol, as is the case in Phillips to produce its foamable mixture. Furthermore, Phillips does not include a pasteurization step as is the case in the present invention which involves heating the premix to a temperature between 50°C and its boiling point to avoid the maillard reaction. Phillips does not require pasteurization, because the maillard reaction cannot occur in the case of only the albumin and globulin-containing compositions such as the reduced form of whey content of Phillips.

That is, because Phillips uses a microfiltered aqueous solution of a whey protein isolate which has very little whey content (about 1/25 of the whole whey and at that generally only the albumine and globulin content of whey), whereas in the present invention whole whey powder possible even with an unpasteurized liquid whey carrier is employed, which results in a considerably greater and complete whey content than in the case of the aqueous microfiltered whey protein isolate solution used by Phillips. It is exactly in view of that very much higher and the more complete whey content in the case of the present invention that pasteurization of the premix has to be included which is not required in the case of the very low and meager whey content in by Phillips.

Furthermore, the foamable, low whey content cosmetic composition of Phillips requires the addition of an oil or fat and of alcohol, all of which are expressly excluded from the high whey content premix of the present invention.

The Japanese reference uniquely applies to deodorizing a humectant prepared with odoriferous mammal milk (not from whey!), whereas no odoriferous mammal milk is employed by the present invention which also does not prepare a humectant, but a premix from whey that is clearly of non-mammal sources.

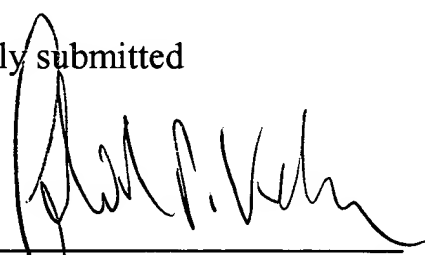
Neither Phillips, nor any of the secondary references include any imidazolidinyl urea along with a preservative in its compositions as is the case in the present invention. Furthermore, the secondary references do not relate to any whey-containing compositions which have unique requirements that have generally no relevance to cosmetic compositions that do not contain whey. The picking and choosing of irrelevant secondary references for their mention of a single feature, and any attempt to combine them **with a completely different kind** of, i.e. whey containing primary reference, especially when the references do not contain any motivation for such combination, is clearly based on the teaching of the applicant's own disclosure and thus the use of impermissible hindsight.

Therefore, the present claims very substantially distinguish over Phillips, and have so distinguished even before their current amendment, and that distinction, including the express requirement for the addition of imidazolidinyl urea, was entirely ignored by the examiner.

In view of the foregoing, reconsideration of the outstanding rejections and the allowance of claims 1-2, 7-10, 17 and 22 is respectfully urged.

Respectfully submitted

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It is hereby certified that this is being mailed on December 12, 2002.

*Francine Sauvage*



Claim Comparison

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--1. A process for producing a premix for a dairy-based cosmetic product, by [which comprises] preparing a premix consisting essentially of [by] mixing whey powder with water or with a pasteurized or unpasteurized liquid whey carrier wherein the whey is obtained as a byproduct of cheesemaking , heating the resulting mixture to a temperature between 50°C and the boiling point of the mixture , then cooling the heated mixture, adding a preservative and imidazolidinyl urea to the mixture prior to or after heating to complete preparation of the premix.--